



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

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**DECISION OF THE BOARD**

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Mailed and Filed: JANUARY 09, 2023

IN THE MATTER OF:

Appeal Board No. 625689

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the initial determination, disqualifying the claimant from receiving benefits, effective November 6, 2021, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held telephone conference hearings at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed August 30, 2022 (), the Administrative Law Judge sustained the initial determinations.

The claimant appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The employer, a temporary agency, hired the claimant in August 2021 after a telephone interview. The employer provided the claimant with documentation to sign, including a certification of receipt of the employee handbook. When the claimant had a question while on an assignment, the employer had advised the claimant to speak directly with the client's on-site supervisor who would bring the matter to the attention of the employer if necessary. The employer did not mention that the claimant could request another assignment if she was unhappy.

As of September 2, 2021, the agency assigned the claimant to a mental health provider, the client, where she worked as a wellness coach. The assignment was

for a period of 90 days, with the possibility of being hired permanently, dependent upon performance. She worked full-time, 36-37 hours per week.

As a wellness coach, the claimant was expected to meet with the client's patients with mental health issues monthly, document the services provided, make referrals, and schedule appointments. On-site, the claimant was supervised by the client's assistant program director and the program director.

In October, the claimant started visiting patients. She traveled to one housing complex to visit a male mental-health patient. When arriving, she immediately felt unsafe due to the people sleeping in stairwells, urinating in public, and loitering in halls. When the claimant arrived at this patient's apartment, the patient greeted the claimant at the door clad in only his underwear and a tank top. She directed him to get dressed; he did not comply. He then mentioned that he had taken a shower for her and inquired whether she thought he smelled good. The claimant tried to ignore his behavior and attempted to conduct her interview. He gazed stared intently at her while locking the apartment door. He ignored her questions about his medication regime and treatment and began closing windows. The claimant grew concerned for her safety and advised the client that his behavior was inappropriate. She advised him that she was leaving, and that he was to be dressed appropriately on the next visit. She left.

She had a similar experience with another male patient who commented that she was beautiful and asked if she exercised because she had a beautiful body. The claimant tried to correct his behavior, but he persisted. He repeatedly asked whether she found him attractive. He offered that he worked out and asked if she liked his body. The claimant ended the visit and left the premises.

On or about October 18, 2021, the claimant spoke with the client's assistant program director and director regarding her concerns while making site visits. She expressed fears for her safety. Both directors advised the claimant of the need "to set boundaries" with clients as part of her job, and that she did not have to share personal information with the patients. They also offered that it was the nature of the populace with mental health issues and there was nothing to be done.

The claimant was hoping for a better response to her concerns. She asked to perform telephone visits with these clients, but they declined. She asked to bring a coworker but was told that there were not enough employees to

accompany her on-site. She sought to work from home to reduce her stress level; she was advised that there was insufficient staffing to allow for her to work from home. At the close of the meeting, the assistant director offered to revisit the possibility of working from home when she returned from vacation.

The assistant director was on vacation through November 1, 2021. Thereafter, the claimant found that nothing had changed; her problems were not being addressed. She felt that the atmosphere was toxic and began to suffer insomnia and health issues. She was afraid continually and the directors refused to consider whether the claimant might work from home. The claimant's doctor had apprised the claimant that she should resign to protect her health. On November 2, 2021, the claimant met with both directors again as to her concerns. In response, they advised the claimant to seek employment elsewhere if she could not handle the assignment and duties.

On November 3, 2021, the client's on-site security guard, who believed that the claimant had deliberately ignored her, yelled, and screamed at the claimant, and denied her access to the office. When the claimant gained access, the guard continued to scream at the claimant in front of a client. The claimant felt that this was the last straw. The claimant apprised the client's director, verbally on November 3, and the employer-agency's director and human resource office, via email, on November 4, 2021, of claimant's intent to resign as of November 5, 2021, due to safety concerns. The employer did not offer the claimant another temporary assignment.

**OPINION:** The credible evidence establishes that the claimant resigned due to concerns about her safety and well-being while conducting home visits to the client's mental health patients. Although the employer alleges that neither the employer nor client were aware of any concerns of the claimant, the contentions are not persuasive in light of the claimant's first-hand credible testimony to the contrary.

We note that the claimant, as instructed by the employer, addressed her concerns to the client's program director and assistant program director. There is no evidence that the employer instructed the claimant as to the chain of command or issues beyond speaking with the client. Although the employer argued that such information was within the employer's handbook, we note that no such handbook was produced at the hearing, nor was there evidence that the claimant received a complete handbook nor was provided training thereon.

We further find that both client's directors offered evasive, vague, and unpersuasive testimony as to the claimant's failure to convey her concerns. Their continued insistence that nothing occurred "to (their) knowledge" and that they "could not recall" suggests contrived ignorance or indifference to the conditions of the claimant's actual employment. We find it telling that both directors vaguely recall discussions with the claimant as to safety and boundaries, but then rely upon their continued lack of knowledge to diminish the severity of the two incidents. Neither witness, however, refuted the claimant's testimony as to patients acting out such that her safety was in jeopardy, but instead evidenced an inability to recall specifics, which is not a denial.

In contrast, the claimant was consistent, credible, and detailed in describing overtly sexual behavior by two different patients that raised safety concerns. Further, we find it significant that the employer's client offered no testimony or evidence of protocols or procedures put in place in advance to protect the claimant when performing her duties. Nor was there any evidence of instruction or guidance offered to the claimant before embarking on her assigned job duties, or even after when complaints were raised, as to how to protect herself while working for the client.

Despite the claimant's request for accommodations to protect her safety, including requests to be accompanied by another staffer on visits, to conduct telephone interviews, and to work from home, no accommodations were offered. We note that the client's final advice to the claimant, to accept the known risks or to resign, demonstrated that there were no additional accommodations to be explored. We find it of further significance, too, that the employer did not offer the claimant another assignment at the time of her resignation, much less inquire or intervene when notified of her intention to discontinue her work for the client. Hence, the claimant's attempts, to address her safety concerns as to her assignment, were unsuccessful. Under these circumstances, we find and conclude that the claimant had no choice but to leave her assignment. Accordingly, we conclude that the claimant resigned with good cause, under non-disqualifying circumstances.

**DECISION:** The decision of the Administrative Law Judge is reversed.

The initial determination, disqualifying the claimant from receiving benefits, effective November 6, 2021, on the basis that the claimant voluntarily

separated from employment without good cause, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.

(Al reclamante se le asignan beneficios con respecto a los temas decididos en el presente.)

RANDALL T. DOUGLAS, MEMBER